

REMARKS

In the Final Office Action mailed March 26, 2007, claims 1-9 and 13-15 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 6,228,063 to Aboul-Hosn (hereinafter "Aboul-Hosn"). Claims 1-9 and 13-15 stand rejected under 35 USC 103(a) as being obvious over Aboul-Hosn in view of U.S. Patent No. 5,830,191 to Hildwein et al. (hereinafter "Hildwein et al."). Claim 10 stands rejected under 35 USC 103(a) as being unpatentable over Aboul-Hosn and Hildwein et al. in view of U.S. Patent No. 5,330,497 to Freitas et al. (hereinafter "Freitas et al."). Claims 11-12 stand rejected under 35 USC 103(a) as being unpatentable over Aboul-Hosn and Hildwein et al. in view of U.S. Patent No. 2,064,435 to Loeffler et al. (hereinafter "Loeffler et al."). Claim 16 stands rejected under 35 USC 103(a) as being unpatentable over Aboul-Hosn and Hildwein et al. in view of U.S. Patent No. 5,423,796 to Shikhman et al. (hereinafter "Shikhman et al."). Claims 19 stands rejected under 35 USC 103(a) as being unpatentable over Aboul-Hosn and Hildwein et al. in view of U.S. Patent No. 2,320,993 to Worner (hereinafter "Worner"). Claims 20-25, 28-30 and 32 stand rejected under 35 USC 103(a) as being unpatentable over Aboul-Hosn and Hildwein et al. and Worner further in view of Freitas et al. Claim 31 stands rejected under 35 USC 103(a) as being unpatentable over Aboul-Hosn and Worner further in view of Shikhman et al. Applicant respectfully disagrees with the Examiner's analysis and requests reconsideration of the claims.

Claim 1 recites, *inter alia*,

... wherein said flexible flange has a frusto-conical shape with a **proximally-concave outer surface that extends radially outward from the exterior surface of said tubular section in a proximal direction toward the proximal end of said tubular section, said outer surface being adapted to fold radially inward and toward the exterior surface of said tubular member during insertion of said port body through a narrow opening in the body wall to thereby reduce diameter of the flexible flange during such insertion (emphasis added).**

Nowhere does the cited prior art teach or suggest these features.

The Examiner rejects claim 1 as being anticipated by Aboul-Hosn. The Examiner equates the lip structure 22 of Aboul-Hosn to the flexible flange of claim 1. This analysis is flawed. The lip structure 22 of Aboul-Hosn provides a concave surface that extends radially inward toward the penetrating member 72 and the interior surface of the cylindrical member 12 during insertion (FIG. 2A). After insertion, the lip structure 22 moves downward and then radially outward to form a proximally-convex sealing surface (FIG. 2B). In contrast, the flexible flange of claim 1 has **“a frusto-conical shape with a proximally-concave outer surface that extends radially outward from the exterior surface of said tubular section in a proximal direction toward the proximal end of said tubular section.”** The concave lip structure 22 of Aboul-Hosn does not extend radially outward from the exterior surface of a tubular member as recited in claim 1. Moreover, claim 1 recites an **“outer surface being adapted to fold radially inward and toward the exterior surface** of said tubular member during insertion of said port body through a narrow opening in the body wall.” In contrast, the lip structure 22 of Aboul-

Hosn extends radially inward toward the penetrating member 72 and **toward the interior surface of the cylindrical member 12** during insertion (FIG. 2A). Clearly, claim 1 is not anticipated by Aboul-Hosn. The Examiner admits the deficiencies of the anticipation rejection of Aboul-Hosn in the Examiner's rejection of claim 1 on grounds of obviousness as summarized below.

The Examiner rejects claim 1 as being obvious over Aboul-Hosn in view of Hildwein et al. The Examiner admits that Aboul-Hosn does not suggest the flexible flange adapted to fold radially inward and toward the exterior surface of said tubular member during insertion of said port body, but goes on to assert that Figs. 17 and 23-26 and the annular flange 148 of Hildwein discloses this feature. Applicants submit that Examiner's combination of Aboul-Hosn and Hildwein et al. is improper and does not teach or suggest important limitations of the claim. More particularly, neither the lip structure 22 of Aboul-Hosn nor the annular flange 148 of Hildwein et al. provide "a **frusto-conical shape with a proximally-concave outer surface that extends radially outward from the exterior surface of said tubular section in a proximal direction toward the proximal end of said tubular section.**" The lip structure 22 of Aboul-Hosn provides a concave surface that extends radially inward toward the penetrating member 72 and the interior surface of the cylindrical member 12 during insertion (FIG. 2A). After insertion, the lip structure 22 moves downward and then radially outward to form a proximally-convex sealing surface (FIG. 2B). The annular flange 148 of Hilwein et al. is flat and does not have a frustoconical shape as claimed. Advantageously, the

frustoconical shape of the flange biases the flange against the tissue wall when inserted into the body and clamped to this tissue wall and thus aids in sealing the flange against the tissue wall. Such advantages are neither taught or suggested by the cited prior art.

Because of these significant differences, Applicant respectfully submits that independent claim 1 as previously submitted is patentable over the cited prior art.

Dependent claims 5-18 are patentable over the cited prior art for those reasons advanced above with respect to independent claim 1 from which they respectively depend and for reciting additional features neither taught nor suggested by the cited prior art.

Claim 19 is directed to a surgical port device including, inter alia,

... a port body including a tubular section having a distal end and a flange disposed at said distal end, **said flange having a frusto-conical shape with a proximally-concave outer surface and also having an annular projection that projects radially outward from said outer surface to provide a drip edge adapted to direct fluids around its periphery** (emphasis added)

Nowhere does the cited prior art teach or suggest these features.

The Examiner points to the combination of Aboul-Hosn and Worner as suggesting this feature. The Examiner admits that Aboul-Hosn does not teach or suggest the annular projection of the claim but goes on to assert that it would be obvious to incorporate the annular skirt of the thermometer device of Worner as part of the surgical port device of Aboul-Hosn. The Examiner's analysis is clearly flawed. More

particularly, the alleged combination teaches away from the claim. The skirt of the thermometer device of Worner is located in the intermediate section of the stem 6 of the instrument, not at the distal end of a tubular member as part of frusto- conical-shaped flange as recited in the claim. Such teaching away is evidence that there is no incentive to combine the two references and the combination is improper. *KSR Int'l Co. v. Teleflex Inc.*, 500 U.S. ___, Slip Op. 04-1350, pg.12 (April 30, 2007).

The dependent claims 20-32 are patentable over the cited prior art for those reasons advanced above with respect to claim 19 from which they respectfully depend and for reciting additional features that are neither taught nor suggested in the prior art.

In a telephone conversation between the Examiner and the undersigned on or about July 10, 2007 regarding the scope of the pending claims and the cited prior art, the Examiner indicated that he had done some additional searching and uncovered U.S. Patent No. 6,537,299 to Hogendijk et al. (hereinafter "Hogendijk et al."). Applicant respectfully requests that the Examiner make this reference of record in the present application. Hogendijk et al. is directed to a hemostatis device for sealing an opening in a blood vessel and has nothing to do with a surgical port device as recited in the claims of the present application. Such a surgical port device provides a passageway for the introduction of surgical instruments and tools. Thus, the Hogendijk et al. reference does not apply to the present invention and is not properly combinable with the cited prior art.

In light of all of the above, it is submitted that the claims are in order for allowance, and prompt allowance is earnestly requested. Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jay P. Sbrollini".

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